

52. (Original) The system of claim 49, wherein the transaction component comprises a monetary transfer component configured to perform a monetary transfer with a bank system over a network connection based on user information and the request.

53. (Original) The system of claim 49, wherein:

the transaction component comprises a business information component configured to retrieve information from a business system over a network connection based on the request; and

wherein the confirmation message generated by the confirmation component comprises at least a portion of the information retrieved from the business system.

54. (Original) The system of claim 49, wherein a recorded request is a request to purchase an item offered for purchase in one or more of the received radio broadcasts or the sent content.

#### REMARKS

This paper responds to an Office Action mailed April 29, 2003, with respect to the above-identified application. Claims 1 through 54 are pending in the application. Claims 1-7, 9-15, 17-23, 25-33, 35-40, 42-51, and 53-54 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,867,780 to Malackowski ("Malackowski"). In addition, Claims 8, 16, 24, 34, 41, and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Malackowski in view of U.S. Patent No. 6,484,147 to Brizendine ("Brizendine"). The Office Action was not made final. Claims 1, 11, 27, 33, 34, 35, and 44 have been amended for clarity as described below. Based on the following remarks, applicants respectfully request reconsideration of the pending claims.



25315

PATENT TRADEMARK OFFICE

**Rejections Under § 102(b)**

Claims 1-7, 9-15, 17-23, 25-33, 35-40, 42-51, and 53-54 were rejected under 35 U.S.C. § 102(b) as being anticipated by Malackowski. The Office Action stated that Malackowski anticipates the Claims listed by disclosing the following elements:

(see at least, col. 2, line 22 – col. 3, line 12, “. . . a prospect driving and listening to a radio broadcast will be prompted to dial . . . will utilize their cellular phone to seek out additional information . . . . radio advertising . . . prospects can be provided with a menu of additional customer services . . . .” col. 4 line 10-col. 8, line 6, “. . . FIG. 1 provides a process overview of the present invention . . . an audio message from the radio . . . manual input to a telephone . . . call may be initiated by automatic processing . . . switch must recognize the caller seeking to utilize the system . . . recognition on the subscriber identity and the subscriber location . . . By means of an Integrated Voice Response the mobile wireless subscriber is thus able to obtain information and/or fulfillment service . . . broadcast radio . . . The location of the mobile wireless terminal will be computed by a processor and special software permits a display of the cellular service area containing the terminal . . . FIG. 4 describes the initiation of the wireless call . . . FIG. 5 describes the integration of the wireless telephone or specifically the mobile wireless transmitter and receiver 210 to a vehicle supporting the caller . . . the wireless telephone be connected by a hardwire interface to a vehicle’s video terminal 214 to allow a display of telephony functions . . . display of video messages sent by wireless means to the user . . . .” col. 9, line 28 – col. 10, line 46, “. . . FIG. 6 further describes the functions of the MTSO of the PWN . . . .”, col. 12, lines 6-56, “. . . FIG. 10 further describes the components of the invention related to the target . . . .”)

(Emphasis added.) Applicants respectfully traverse.

Malackowski teaches a system that depends on a prospective consumer taking the action of using his or her telephone to place a call to seek fulfillment. This is made clear in the Summary of the Invention cited by the Examiner:

The technology of the invention will be practiced in at least three general modes. First, a prospect driving past an outdoor signboard will observe the advertiser's message, which will include a call-to-action, for example "CALL \*500" or selected other abbreviated access code using the driver's cellular phone. Second, a prospect driving and listening to a radio broadcast will be prompted to dial \*4AD (for example) by trailers to commercials. Third, drivers passing highway interchanges with informational gas, food, and lodging signage will also



25315

PATENT TRADEMARK OFFICE

be prompted to "CALL \*522", for example. Other uses of the invention may involve prompts located on buses, on board commuter trains, in public stadiums, etc.

Following the general direction to dial the access code, each individual commercial spot will contain a one or more digit identifying alphanumeric code known as the Advertiser Identifier. Hence, a typical outdoor signboard will contain the following: ##STR1##

The prospect, held captive in his or her car, perhaps sitting in rush-hour traffic, will utilize their cellular phone to seek out additional information on the advertized product or service. In the case of the highway interchange, the prospect will utilize the invention to obtain detailed information of the products or services (e.g. shopping, food, lodging, gas, etc.) available within three to five minutes of that particular interchange.

Once prospects call \*500 or other designated access code, they will hear a short message welcoming them to the system and prompting them to either dial or speak a one or more digit identifier, for example the name of the advertiser or a product name. After dialing or speaking an identifier, the customer will enter either an automated messaging system or be greeted by a live operator. Due to the inherent limitations of outdoor and radio advertising in terms of communicating a detailed message of product and service benefits, the additional level of transmitted information will have a high perceived value to both the advertiser and the primary media company.

Based upon the particular services contracted, prospects can be provided with a menu of additional customer services including: the mailing of product/service information to their home or business; an audio listing of local retailers and their addresses or telephone numbers (with directions under certain circumstances); direct product sales; couponing; sampling; sweepstakes entry; polling; optional transfer to a retailer; optional transfer to the advertiser's customer service number; optional transfer to the advertiser's mail order desk; or, an opportunity to participate in a brief survey (for which the prospect may receive some nominal compensation or award).

As is made clear throughout the Malackowski patent, Malackowski provides added value to vendors who purchase advertising time and billboard space. Malackowski teaches a shorthand method allowing potential consumers consciously perceiving the advertising to take further steps to respond to the advertisement.



25315

PATENT TRADEMARK OFFICE

More specifically, Malackowski discloses a "service fulfillment system" to provide consumers a free-of-charge, telephone shortcut to contact an advertiser about a product or service described in a paid advertisement. As stated by the applied reference, its "FIG. 1 provides a process overview of the present invention." (Column 4, lines 10-11.) As FIG. 1 shows, and as it is described in the accompanying text (see column 1, lines 11-50), Malackowski relies on a consumer actively making an effort to contact the vendor to secure fulfillment:

At box 101, the prospect receives the sensory input which prompts use of the system, either via road signage, and audio message from the radio, etc. Upon manual input to a telephone, at 102, the prospect (hereinafter referred to as the "caller") calls in to obtain information suggested by the sensory input.

(Column 4, lines 20-25, emphasis added.) As is further described in Malackowski, the key to its inventive step is its system's receipt of a call, recognition of a shortcut dialing code such as "\*500" keyed in by a user, and relay of that code to an advertiser or its fulfillment agent:

In accordance with prior art telephone service, the call is communicated to a base station switch, 111, at which a base station controller relays the call to the [Mobile Telephone Switching Office] or other wireless service switch 112, as appropriate.

Central to the operation of the inventive system is the functioning of the wireless switch 112. This switch must recognize the caller seeking to utilize the system and must recognize the access code and compare it to a database of entries in a database of approved codes.

(Column 4, lines 55-64, emphasis added.). In sum, Malackowski provides a shortcut for a consumer in his car to respond to a radio advertisement or a billboard ad. The inventive step, as expressly acknowledged by Malackowski, is that the consumer need not remember or enter an entire telephone number. Instead, the user can key in a four-digit code which the centrally important wireless switch uses to route the call to the advertiser or its agent.

It is significant to note that Malackowski depends on the consumer being motivated to place a wireless call. The Examiner notes that, in FIGS. 4 and 5, Malackowski provides



additional means to prompt a caller to initiate the call or to make it easier for the prospect to make the call. As described in connection with FIG. 4, the sensory input used to motivate the caller to make the call might be sent via pagers or other devices (column 6, line 61, through column 7, line 21). However the sensory information is supplied to the caller, however, it is clear that the invention relies on providing "sensory input that . . . may prompt the customer to initiate the wireless call" (column 7, lines 22-23). Further, while Malackowski contemplates a telephone integrated with a keypad on the vehicle's steering wheel or integrated with a vehicle's video display for displaying telephony functions (column 7, lines 37-57), Malackowski depends on a prospect or consumer receiving the advertiser's sensory information and placing a call.

Four aspects of Malackowski's teachings particularly differentiate Malackowski from the present invention. First, Malackowski teaches a system in which the shorthand contact information must be inserted into the advertising content to enable the advertiser and/or potential consumer to benefit from the possibility of obtaining fulfillment based on the shorthand contact information. For example, using Malackowski with a radio advertisement, some of the paid advertising time would have to be devoted to providing the shorthand contact information, e.g., "For more information, please dial \*522. Again, that number is \*522." With an average commercial advertisement lasting 30 seconds, devoting a number of those seconds to providing the fulfillment contact information takes away time that could be used to provide other consumer inducements.

Second, Malackowski only provides advertisers an additional conduit to potential consumers when those consumers actually have heard or seen the advertisers' commercials. Malackowski is directed to providing consumers exposed to a paid advertisement, such as a radio ad or a billboard, a shorthand cellular telephone number to call to obtain more information or order a product. If the potential consumers do not consciously perceive the content of an advertisement, the additional conduit offered by Malackowski is of no avail.




25315

PATENT TRADEMARK OFFICE

- 17 -

INTL-1-1016AM

BLACK LOWE & GRAHAM <sup>PLLC</sup>

  
701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Third, Malackowski teaches a system in which the potential consumers must remember the contact information provided within the content of the advertisement. A user must make a mental or written note of the shorthand contact information to contact the advertiser to seek fulfillment. Although having to disengage from other thoughts to concentrate on remembering the number or stopping to write it down might be inconvenient, the situation is potentially dangerous for someone, driving down the road, who hears the number and wants to contact the advertiser for fulfillment. The driver, at a minimum, would be distracted from his or her primary responsibility of safe driving while focusing on remembering the number. Even worse, if the driver should take his or her hands off the wheel to write down the number, it could be dangerous for that driver and others on the road.

Fourth, Malackowski depends on a consumer placing a telephone call to seek fulfillment. In addition to the contact information having to be inserted into the advertisement, the potential consumer having to perceive the contact information, and the potential consumer having to remember the contact information, the potential consumer must take the active step of placing the call and communicating with a fulfillment center. Malackowski places the burden of obtaining fulfillment squarely on the shoulders of the potential consumer to initiate contact with the advertiser. In sum, although Malackowski provides a shorthand method of contacting the advertiser, in terms of requiring the potential consumer to act to achieve fulfillment, Malackowski is comparable to any advertisement offering a website or a phone number for a potential consumer to take the next step.

Turning to the claims, the disclosed invention does not rely on contact information being inserted into an ad, or a potential consumer perceiving, remembering and being able and motivated to use the contact information having to be successfully motivated to dial a telephone number, however short. According to the present invention, a user can interact with any vendor while receiving a radio broadcast at a vehicle, with the vendor wirelessly transmitting content




25315

PATENT TRADEMARK OFFICE

- 18 -

INTL-1-1016AM

BLACK LOWE & GRAHAM <sup>PLC</sup>

  
701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

from a server to the vehicle via a data network based on radio broadcast information associated with the received radio broadcast. Content is presented to the user over a user interface at the vehicle. Requests made by the user in response to the presented content are recorded and the recorded requests are then wirelessly transmitted to the server over the data network. The request is processed, generating a confirmation message based on the request that is wirelessly transmitted to the user in the vehicle over the data network and presented over the user interface. Applicants note that Claims 1, 11, 27, 33, 34, 35, and 44 have been amended to clarify that the confirmation message suitably acknowledges the request with or without a transaction being completed.

In other words, as pointed out in the applicants' claims, while the user receives a radio broadcast in a vehicle, content associated with the radio broadcast also is being wirelessly transmitted via a data network and presented at a user interface. Malackowski does not teach wirelessly transmitting content associated with the radio broadcast over a data network for presenting content and allowing for the recording of requests by a user.

The distinctions between the present invention and Malackowski are illustrated by the following, non-limiting illustrations. For example, as described in the applicants' application, a potential consumer may be driving down the road listening to the radio and enjoying a song. Embodiments of the present invention may supply a visual message describing the CD containing the song and ask the user if the user wants to buy it. The user can buy the CD by pressing a button or uttering a voice command. Here, as opposed to the system taught by Malackowski, there need not be any contact information inserted into the radio broadcast, before, during or after the song. The opportunity for the potential consumer to obtain fulfillment is transmitted over the data network and is transparent to the radio broadcast. Also, because the offer to acquire the music is presented directly to the user over the user interface, the user need not perceive and extract contact information from an ad, and the user does not have to remember



25315

PATENT TRADEMARK OFFICE

*Not claimed*  
the contact information. Further, the user does not have to take steps to place a call to initiate the fulfillment opportunity because the information sent over the data network already has initiated the opportunity – the user only need accept the opportunity provided.

Similarly, a user driving down the road may hear an ad for a sandwich shop's new sandwich. Simultaneously, without cutting into or adding to the length of the paid advertisement, fulfillment information can be sent over the data network. The user can be asked by the interface "would you like one?" If the user thinks he or she would, even if the user had not thought about it previously, the user can accept the fulfillment opportunity. Upon accepting the fulfillment opportunity, the user may be told where to turn for the closest shop and asked if he or she wants to order one for pickup upon arrival. Again, the user presses a button or utters a request, and the sandwich is ordered for the user to pick up on arrival. (See page 6, line 25 through page 7, line 15).

*Not claimed*  
In sum, whereas Malackowski teaches a system attempting to simplify the process by which a consumer is motivated to place a telephone call in order to seek out fulfillment, the present invention allows a vendor to reach out to the consumer so that all he or she has to do is agree to be fulfilled.

*no*  
Thus, respectfully, Malackowski does not anticipate the subject matter claimed by the applicants' independent claims independent claims 1, 11, 19, 27, 37, 44, 47, 48, and 49, and applicants respectfully request reconsideration and allowance of these claims. In addition, claims 2-7, 9-10, 12-15, 17-18, 20-23, 25-26, 28-33, 35-36, 38-40, 42-43, 45-46, 53-54 depend from claims which are patentably distinct from the reference applied and add additional limitations. Accordingly, applicants respectfully request reconsideration and allowance of claims 1-7, 9-15, 17-23, 25-33, 35-40, 42-51, and 53-54.



25315

PATENT TRADEMARK OFFICE



**Rejections Under § 103(a)**

Claims 8, 16, 24, 34, 41, and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Malackowski in view of Brizendine. Applicants respectfully submit that a *prima facie* case of obviousness has not been set forth.

As discussed above, Malackowski discloses a “service fulfillment system” to provide consumers a telephone shortcut to contact a vendor about a product or service that a prospective consumer can use to contact the vendor or the vendor’s fulfillment agent. Malackowski does not teach a method or system in which content associated with a radio broadcast is sent from a server over a wireless network to enable a listener to simply accept an offer for fulfillment of goods or services.

Brizendine does not overcome this deficiency of Malackowski. Brizendine, as summarized by the Examiner, discloses a system for contacting a bank and executing a money transfer based on user information and the request. More specifically, as understood by the applicants, Brizendine is directed toward creating a secondary transaction system allowing a person who purchases merchandise with a credit or prepaid money card to accumulate “points” redeemable with educational or other institutions. In other words, Brizendine facilitates a conventional transaction of buying merchandise – a primary transaction – while also facilitating a second transaction for the accumulation of reward points.

Respectfully, nothing in either Brizendine or Malackowski neither teaches nor suggests that one should be combined with the other. If any such teachings or suggestions are included in the applied references, applicants request that the Examiner point out such teachings or suggestions in the applied references so that the applications may respond accordingly.

Moreover, for the sake of argument, even if it were obvious to combine Brizendine with Malackowski, their combined teachings do not render obvious the present invention. Turning to the claims, the claims presented patentably distinguish over the applied references. For the



25315

PATENT TRADEMARK OFFICE

reasons previously described, Claims 8, 16, 24, 34, 41, and 52 depend from claims which already are patentably distinct from the subject matter of Malackowski. Because the independent claims from which these claims depend are novel and patentable, the dependent claims are not rendered obvious in view of Brizendine.

Moreover, a combination of Malackowski and Brizendine does not render the claimed invention obvious. Any resulting combination of Malackowski and Brizendine at most teaches that a prospective consumer, upon dialing a telephone number to contact a vendor or fulfillment agent, can direct the vendor or fulfillment agent with whom the user is speaking to bill the user's account for the transaction such that the user's account might accumulate reward points for the transaction.

By contrast, the claimed invention enables a user desiring to accept an offer for goods or services to accept and pay for the offered goods or services using a monetary transfer component configured to perform a monetary transfer with a bank system over a network connection based on user information and the fulfillment request. According to the claims, the user of applicants' invention does not need to initiate a telephone call to complete the transaction or authorize a bank transaction to pay for the transaction. Thus, because Claims 8, 16, 24, 34, 41, and 52 add further limitations to patentable claims, applicants request that the Examiner reconsider the rejection and find these claims patentable over the applied references.

### CONCLUSION

In view of the above amendments and remarks, applicants very respectfully submits that claims 1-7, 9-15, 17-23, 25-33, 35-40, 42-51, and 53-54 are not anticipated by Malackowski. Further, applicants submit that claims 8, 16, 24, 34, 41, and 52 are not obvious in view of Malackowski in further view of Brizendine. Applicants very respectfully submit that all claims



25315  
PATENT TRADEMARK OFFICE

- 22 -

INTL-1-1016AM

BLACK LOWE & GRAHAM <sup>PLLC</sup>

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Application Serial. No. 09/884,854  
Amendment dated September 29, 2003  
Reply to Office action of April 29, 2003

pending in this application are patentable over the cited references and are in condition for allowance. Applicants very respectfully request reconsideration and allowance of all claims.

Respectfully submitted,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



Frank J. Bozzo

Registration No. 36,756

Direct Dial: 206.957.2483.



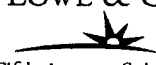
25315

PATENT TRADEMARK OFFICE

- 23 -

INTL-1-1016AM

BLACK LOWE & GRAHAM<sup>PLLC</sup>



701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301